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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

ARTEC GROUP, INC., a California  
 Corporation,

Plaintiff,

vs.

ANDREY KLIMOV, an individual, et al.,

Defendants.

) Case No. 15-cv-03449-EMC

) **JOINT STATEMENT RE: CASE**  
 ) **MANAGEMENT CONFERENCE**

) Assigned to the Hon. Edward M. Chen

) Date: September 28, 2017

) Time: 10:30 a.m.

) Place: Courtroom 5, 17th Floor  
 ) San Francisco

) Action Filed: July 27, 2015

) Fact Discovery Close: August 17, 2017

) Trial Date: February 20, 2018

Plaintiff Artec Group, Inc. (“Artec” or “Plaintiff”) and Defendant Axon Business Systems, LLC (“Axon” or “Defendant”) hereby submit this updated Joint Case Management Statement pursuant to the Court’s Order of September 15, 2017 (Dkt. 327). To the extent any of the sections set forth in the Standing Order for All Judges of the Northern District of California, Contents of Joint Case Management Statement, are not included, the information may be found in the prior joint case management statements filed in this matter. *See* Dkts. 75 and 158.

**A. JOINT CASE MANAGEMENT STATEMENT.**

**1. JURISDICTION AND SERVICE.**

The Court denied Axon’s original motion to dismiss for lack of personal jurisdiction in May 2016 (Dkt. 104.). Axon intends to file a motion for reconsideration of the Court’s May 2016 order, consistent with the Court’s finding in the September 15, 2017 Order Granting Axon’s Motion to Vacate Default (Dkt. 327) that “*Bristol-Myers* sheds additional light on the law on personal jurisdiction such that it would be a sufficient basis to allow Axon to move to reconsider . . . .” The parties have agreed upon the following proposed briefing schedule:

Axon’s Opening Brief: **October 12, 2017**

Artec’s Opposition: **November 2, 2017**

Axon’s Reply: **November 16, 2017**

Hearing Date: **At the Court’s convenience**

**2. MOTIONS.**

**a. Plaintiff’s Statement.**

Plaintiff has no motions currently pending against Axon. After the Court granted Axon’s counsel’s motion to withdraw in March 2017, Artec moved for entry of default. The Court entered default against Axon on June 1, 2017. (Dkt. 259). Plaintiff filed a

1 motion for default judgment on August 2, 2017. (Dkt. 295). The Court set aside the  
2 default on September 15, 2017. (Dkt. 327).

3       Apparently, Axon now takes the position that the default is only set aside *partially*;  
4 Axon plans to appear represented by counsel for only those parts of the litigation in which  
5 it chooses to participate, namely, contesting prior rulings against it, and when that doesn't  
6 succeed, renewing its improper opposition to entry of default judgment. But for those  
7 parts of the litigation in which Axon does not want to participate (e.g., discovery), it  
8 conveniently has not retained counsel. Artec is not aware of any authority to support  
9 Axon's position that it is permitted to partially set aside default, and that it may appear this  
10 late in the case for only the limited purposes it now chooses. Moreover, Axon did not state  
11 in its motion to set aside the default that it was asking the Court to only partially set aside  
12 the default, or cite any authority to support that position. As a result, setting aside of the  
13 default is a sham, and Axon remains a unrepresented party in default, who should not be  
14 permitted to appear, and Artec should be permitted to resubmit its motion for entry of  
15 default judgment against Axon.

16       **b. Defendant's Statement.**

17       With the Court's permission, Axon moved to set aside the default judgment on  
18 jurisdictional grounds. The Court granted Axon's motion, but reserved ruling on the  
19 threshold issue of personal jurisdiction. Consistent with the Court's Order Granting  
20 Defendant's Motion to Vacate Default, Axon intends to retain Seyfarth Shaw LLP for the  
21 limited-purpose engagement of filing a motion for reconsideration of the prior order  
22 denying Axon's motion to dismiss for lack of personal jurisdiction.

23       Contrary to Plaintiff's assertions, there is nothing improper with Axon's request to  
24 have the jurisdictional issue conclusively decided, and Axon has previously sought, with  
25 full disclosure to the Court and parties, permission to make such jurisdictional challenges  
26 and to challenge default. Axon candidly sought and received advance permission at the  
27 time of withdrawal of its counsel, to engage counsel for the limited purpose of challenging

1 any attempt to enter default. (Dkt. No. 232, Transcript of March 29, 2017 hearing on  
2 motion to withdraw, p. 17.) The Court previously granted Axon permission to engage  
3 counsel for the limited purpose of challenging default (Dkt. 315), and for the limited  
4 purpose of pursuing settlement (Dkt. 306.)

5       Seyfarth's present engagement remains limited to continuing to pursue the  
6 jurisdictional challenge presented in Axon's Motion to Vacate Default. Axon has  
7 consistently maintained from the inception of this action that Plaintiff cannot establish the  
8 minimum contacts necessary to establish personal jurisdiction, and any judgment entered  
9 in this action would therefore be void. Consistent with that position, should the motion for  
10 reconsideration of the prior jurisdictional ruling not be granted, Axon does not intend to  
11 retain counsel to further litigate the matter, aside from opposing any motion for entry of  
12 default judgment, and any potential appeal. There is nothing new or improper with this  
13 election. *See*, Dkt. 327, at 3:8-3:10 ("It was not unreasonable for Axon to conclude that it  
14 was no longer financially worthwhile to defend the lawsuit, but to still try to contest the  
15 default judgment motion which could render it financially liable and to still try to settle the  
16 dispute.")

17 **3. DISCOVERY.**

18 **a. Plaintiff's Statement.**

19       This case has been pending for more than two years. Axon's counsel moved to  
20 withdraw soon after discovery began in this case in late 2016, and Artec has been  
21 prevented from completing its discovery against Axon due to counsel's withdrawal and  
22 Axon's subsequent default. Prior to the default, Artec served requests for production on  
23 Axon, and Axon produced some documents prior to its counsel withdrawing. But Artec  
24 will require additional discovery, including depositions of Axon's officers, executives,  
25 and/or employees involved in the events disclosed in the First Amended Complaint. Artec  
26 maintains that discovery should proceed immediately in this matter, so that it may be  
27 completed in time for the February 2018 trial.

**b. Defendant's Statement.**

Consistent with Axon’s status as a peripheral party to this trade secret action against the Klimov defendants, Artec delayed prosecuting the action against Axon and delayed in pursuing discovery from Axon. Axon was the sixteenth named defendant to the original Complaint in this action, and Artec did not attempt to effect service on Axon until January 28, 2015—over five months and 80 docket entries after Artec filed the original complaint. Having failed to effect service in January 2015, Artec did not reattempt service until July 28, 2016—over one year and 116 docket entries after filing the complaint. Thereafter, Plaintiff further delayed propounding *any* discovery to Axon until February 17, 2017 (*i.e.*, nearly nineteen months after filing the complaint). Plaintiff served one set of requests for production to which Axon responded and produced responsive documents, and Axon fully satisfied its discovery obligations as to Plaintiff’s pending discovery prior to withdrawal. As noted above, it is Axon’s position that Plaintiff cannot establish the contacts necessary to support personal jurisdiction. Axon does not intend to engage counsel for the further purpose of litigating the action beyond the challenge to jurisdiction, and, if needed, any motion for entry of default judgment.

#### **4. SETTLEMENT AND ADR.**

**a. Plaintiff's Statement:**

Artec, Mr. Klimov, and counsel for Axon participated in a mandatory settlement conference before Magistrate Judge Laporte on August 11, 2017. Artec reached a settlement with Mr. Klimov during the settlement conference, and entered the terms of the settlement on the record. (Dkt. 313). Artec and Klimov are working on completing some additional documentation of the specific assignments and licenses of intellectual property required by the settlement, and hope to complete those tasks prior to the Case Management Conference on September 28, 2017. Ms. Klimova and Ms. Stebleva have indicated their potential agreement also to be bound by the terms agreed to by Mr. Klimov; if they do

1 agree to be bound by those terms, settlement will be completed with them as well. If they  
2 do not agree, Artec will seek entry of default against each of them.

3 Axon also appeared through counsel at the settlement conference, and settlement  
4 was not reached between Artec and Axon. Artec's claims against Axon remain, and are  
5 unaffected by the settlement with Mr. Klimov, for which the parties exchanged valuable  
6 consideration. Artec's claims against Axon are similarly unaffected by unasserted claims  
7 Axon contends it has against Mr. Klimov.

8 **b. Defendant's Statement:**

9 Axon's counsel was granted permission to attend the mandatory settlement  
10 conference over Plaintiff's objection to Axon's participation, but a settlement was not  
11 reached between Artec and Axon. The pending settlement agreement reached between  
12 Artec and Klimov (and anticipated settlement with Ms. Klimova and Ms. Stebleva)  
13 resolves all claims against the primary defendants to this action (i.e., the parties alleged to  
14 have purportedly misappropriated trade secrets), and grants Klimov *a five-year license* to  
15 market the products Axon is alleged to have improperly purchased from him. It is Axon's  
16 position that Plaintiff's present attempt to seek recovery from Axon for the purported  
17 purchase of these products is inconsistent with Artec's settlement and license agreement  
18 with Klimov and the remaining defendants. The failure to include Axon within the  
19 settlement also leaves Klimov, a party not represented by counsel at the mediation, with  
20 ongoing exposure due to his indemnification obligations to Axon.

21 **5. SCHEDULING AND TRIAL.**

22 The Court had previously ordered the following dates (Dkts. 171, 289, 325):

23 Close of Party and Third Party Factual Discovery: 8/17/2017.

24 Expert Reports: Opening reports by 10/26/2017; Rebuttal reports by 11/8/2017.

25 Expert Discovery Cut-off: 11/22/2017

26 Dispositive Motions: Must be heard no later than 12/21/2017 at 1:30 p.m.

1 An estimated twelve (12) day jury trial in this matter is scheduled to commence on  
 2 2/20/2018 at 8:30 a.m. in Courtroom 5. (Dkt. 171).

3 (1) **Plaintiff's Statement.**

4 As stated above, this case has been pending for more than two years, and trial is set  
 5 to commence on February 20, 2018. Fact discovery has not been completed between Artec  
 6 and Axon, and it will have to be reopened and the discovery schedule revised accordingly.  
 7 Artec objects to further delay of resolution of this matter, and therefore, requests that fact  
 8 discovery be reopened immediately and that the trial date remain unchanged.

9 Artec's position is that the trial date should remain unchanged, fact discovery  
 10 should proceed immediately, and the parties shall endeavor to complete fact discovery in a  
 11 timely fashion in light of the February trial date.

12 (2) **Defendant's Statement.**

13 As noted above, it is Axon's position that Plaintiff cannot establish the contacts  
 14 necessary to support personal jurisdiction. Axon does not intend to engage counsel for the  
 15 further purpose of litigating the action beyond the challenge to jurisdiction, and, if needed,  
 16 any subsequent motion for entry of default judgment.

17  
 18 Dated: September 21, 2017

Respectfully submitted,

19 By: /s/ Rachel M. Capoccia  
 20 Louise Ann Fernandez  
 21 An Nguyen Ruda  
 22 Jeffer Mangels Butler & Mitchell LLP

23 Benjamin Davidson  
 24 Law Offices of Benjamin Davidson, P.C.

25 Attorneys for Plaintiff  
 26 ARTEC GROUP, INC.

Respectfully submitted,

By: /s/ Michael W. Kopp

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